

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

MURTY VEPURI
ASHVIN PANCHAL
KVK-TECH, INC.

Case No. 21-132-HB

The Hon. Harvey Bartle III

ORAL ARGUMENT REQUESTED

**DEFENDANTS' JOINT MOTION TO DIRECT THE GOVERNMENT
TO GIVE NOTICE OF ITS INTENT TO RELY UPON 404(B) EVIDENCE**

Defendants Murty Vepuri, Ashvin Panchal, and KVK-Tech, Inc. (collectively, "Defendants"), by and through undersigned counsel, hereby move this Court for an order requiring the government to provide: (1) notice of its intent to introduce 404(b) evidence; and (2) a list of all such evidence, including names of witnesses, dates, summaries of expected testimony, and any related documentary evidence as soon as practicable but no less than thirty (30) days before trial. In support of this Motion, Defendants rely upon the attached memorandum of law, which is incorporated herein.

WHEREFORE, Defendants respectfully request that this Court enter the attached Order requiring the government to give notice of its intent to reply upon 404(b) evidence as soon as practicable and no less than thirty days before trial.

Dated: December 1, 2021

Respectfully submitted,

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MURTY VEPURI
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ORAL ARGUMENT REQUESTED

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' JOINT MOTION TO DIRECT GOVERNMENT TO
GIVE NOTICE OF INTENT TO RELY UPON 404(B) EVIDENCE**

Pursuant to Federal Rule of Evidence 404(b), Defendants Murty Vepuri, Ashvin Panchal, and KVK-Tech, Inc., by and through undersigned counsel, respectfully move this Court to direct the government to (1) provide pretrial notice of its intent to introduce evidence alleging the Defendants' commissions of other crimes, wrongs, acts, and misconduct, and (2) provide Defendants with a list of all such evidence, including names of witnesses, dates, summaries of expected testimony, and any related documentary evidence. Defendants request that the government provide this notice as soon as practicable, but—consistent with the practice in this Circuit—no less than thirty days before trial.

Rule 404(b) provides that, where requested by a criminal defendant, the government must give “reasonable notice” of evidence of other crimes, wrongs, or acts that it intends to offer at trial to allow the defendant “a fair opportunity to meet it.” Fed. R. Evid. 404(b)(3). The notice must be in writing and must articulate the permitted purpose for which the government seeks to offer the evidence. *See id.* The purpose of this pretrial notice requirement is to “reduce surprise and promote early resolution on the issues of admissibility.” Fed. R. Evid. 404(b), Notes of Committee on the Judiciary, Sen. Rep. No. 93-1277. What constitutes “reasonable notice” is determined by

the “circumstances and complexity of the prosecution.” *United States v. Coles*, 511 F. Supp. 3d 566, 593 (M.D. Pa. 2021).

Courts in this Circuit repeatedly have ordered the government to provide at least thirty days’ notice of Rule 404(b) evidence to allow defendants sufficient time to rebut the impact of such evidence or prepare motions *in limine* to preclude its admission at trial. *See, e.g., Coles*, 511 F. Supp. 3d at 593 (ordering the government to notify all defendants whether it intends to offer evidence under Rule 404(b) “at least 30 days before trial,” given the “circumstances and complexity of th[e] prosecution, and the anticipated volume of motions *in limine*”); *United States v. Campell*, 2018 U.S. Dist. LEXIS 34936, at *1 (D. Del. Mar. 5, 2018) (ordering the government to give notice of its intent to use Rule 404(b) evidence “no later than thirty days before trial”); *United States v. Smith*, 2017 U.S. Dist. LEXIS 185827 (D. Del. Nov. 9, 2017) (same); *see also United States v. Goode*, 2018 WL 919928, at *17 (S.D.N.Y. Feb. 15, 2018) (same); *United States v. Vaid*, 2017 WL 3891695, at *13 (S.D.N.Y. Sept. 5, 2017) (same).

There is no reason to deviate from this precedent here. In this case, the significant volume of discovery, the number of defendants, and the complexity of the government’s case all warrant at least thirty days’ notice of the government’s intent to use Rule 404(b) evidence at trial. Defendants are charged with a five-year scheme to commit offenses against the United States (including by defrauding the U.S. Food and Drug Administration), and KVK-Tech is separately charged with defrauding a large wholesale customer through use of the mails. Dkt. No. 4. This Court has already found that “the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution and other complexity, that it is unreasonable to expect adequate preparation within the periods of time established [by the Speedy Trial Act].” Dkt. No. 62. The voluminous evidence and discovery in this case—including hundreds of

thousands of pages of documents and numerous witnesses—will inevitably give rise to several motions *in limine* on the admissibility of certain evidence. *See* Dkt. No. 50. The government itself has noted that, “[g]iven the complexity of this case, the defendants are likely to file motions that may raise significant evidentiary and legal issues.” *Id.* Accordingly, at least thirty days is necessary for Defendants to prepare to rebut such evidence or raise any admissibility issues, for the government to respond, and for this Court to resolve any such issues in advance of trial.

Accordingly, Defendants respectfully request that this Court direct the government to provide notice of its intent to admit Rule 404(b) evidence at trial, as soon as practicable but no less than thirty days before trial.

Dated: December 1, 2021

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I served a copy of *Defendants' Joint Motion to Direct the Government to Give Notice of its Intent to Rely Upon 404(b) Evidence and Memorandum in Support thereof*, upon the following via ECF and e-mail:

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